IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24298 of 2004

Between:

M.S Ali, S/o.Late Sahid Ali,
R/o.5-8-82, Ansar Colony, Barkathpura, Nalgonda.

..... PETITIONER

AND

1 The Depot Manager, APSRTC, Bus Depot, Nalgonda.
2 The Depot Manager, APSRTC, Bus Depot, Suryapet, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or direction particularly one in the nature of writ of Certiorari, quash the impugned Proc.No.P1/1(43)/90-NLG Dt.25.3.1991 in deferring increment for a period of one year with cumulative effect with holding an enquiry as band in law, in violation of Art.14,16 & 21 of the Constitution of India and in violation of Reg.12 (2) of the C.C.&A Reg.of APSRTC, 1963 and consequently direct the 2nd respondent to restore the said deferred increments along with all consequential benefits.

Counsel for the Petitioner:MR.V.NARASIMHA GOUD

Counsel for the Respondent Nos.1&2: MR.V.T.M.PRASAD, STANDING COUNSEL FOR APSRTC

The Court at the stage of admission, made the following :

ORDER:

The petitioner is working as a conductor in APSRTC. He was issued a charge memo dated 20.12.1990 for having remained absent for duty from 21.4.1990 to 23.4.1990 without any intimation or prior sanction of leave; for having failed to submit the authorized medical certificate and for having habituated to absent duties without any intimation. The petitioner had submitted his explanation. The same was taken into account and the 1st respondent has passed orders dated 25.3.1991 imposing stoppage of one increment with cumulative effect for a period of one year. The petitioner challenges the same in this writ petition on the ground that though, what was imposed is a major penalty, the respondents did not hold domestic enquiry.

Heard learned counsel for the petitioner and learned standing

counsel for the respondents.

The learned counsel for the petitioner places reliance upon a judgment of Supreme Court in KULVANT SINGH GILL V.STATE OF PUNJAB as well as a decision of this court in S.K.MASTHAN v.MANAGING DIRECTOR.

The learned standing counsel Sri V.T.M.Prasad on the other hand submits that the writ petition cannot be maintained since it is filed 13 years after the impugned order and the same deserves to be dismissed on the ground of latches.

It is true that the writ petition is filed 13 years after the 1st respondent has passed orders imposing penalty. In the normal course of things, the writ petition deserves to be dismissed on the ground of latches. However, in the matter of rights of employees, the Supreme Court in GURUMAL SING v.PRINCIPAL, GOVERNMENT COLLEGE OF EDUCATION has held that the belated challenge of the orders detrimental to the interests of the employees should not result in total denial of relief, and at the most they can be denied back wages. Therefore, the writ petition cannot be dismissed on the ground of latches alone.

Through the impugned order the respondents have imposed the penalty of stoppage of one annual increment with cumulative effect. No departmental enquiry was conducted. From a perusal of the Classiffication Control & Appeal Regulations, it is evident that the penalty of stoppage of one increment with cumulative effect cannot be treated as a minor penalty. Therefore, the same could have been imposed only after conducting enquiry. The Hon'ble Supreme Court in Kulvant Singh Gill's case (1 supra) held that major penalty cannot be imposed without conducting the departmental enquiry. In that view of the matter the impugned order cannot be sustained.

As a result of setting aside of the impugned order the matter has to be remitted back to the 2nd respondent for fresh consideration. However, having regard to the fact that the order was passed more

than a decade ago, this Court feels it just and proper to treat the punishment against the petitioner, as the one for stoppage of one increment without cumulative effect. Since, the petitioner has challenged the impugned order after 13 years, it is held that he shall not be entitled for any back wages or arrears of pay, as a consequence of the modification of the punishment. The petitioner shall however be entitled for refixation of pay with prospective effect.

The writ petition is accordingly disposed of with the above direction. No costs.

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28.12.2004

bsv

To

1 The Depot Manager, APSRTC, Bus Depot, Nalgonda.
2 The Depot Manager, APSRTC, Bus Depot, Suryapet, Nalgonda District.

3 2 CD copies